

David Portee
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FILED
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RICHARD W. WIERING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN - PRO-SE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

(PR)

JW

DAVID PORTEE.,
plaintiff.,

CASE No.-

CV 08 3566

v.

CLAIM UNDER THE CIVIL RIGHTS ACT 42 U.S.C§1983

COUNTY OF SANTA CLARA,
and JAMES NORRISS

JURY TRIAL DEMANDED

INTRODUCTION

1. This action is filed Pro-Se by a prisoner currently confined within the Correctional Training Facility, (CTF), located in Soledad, California. The plaintiff alleges that Santa Clara County, and James Norris a criminalst employed by defendant Santa Clara County, unlawfully and maliciously destroyed potentially exonerating evidence. Thereby violating the CONSTITUTION OF THE UNITED STATES OF AMERICA, specifically the FOURTEENTH AMENDMENT.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

2. No exhaustion requirements are necessary, pertaining to Federal Constitutional violations.

PARTIES

1 3. Santa Clara County is a person for 42 U.S.C.1983 purposes. And is herein
2 sued in it's individual capacity.

3 4. James Norris is a Criminalist employed by Santa Clara County responsible
4 for unlawfully destroying evidence. He is sued in his individual capacity.

5 **CAUSE IN FACT**

6 5. On June 20, 1982, the plaintiff was convicted of a violation of the
7 penal Code, following a trial by jury, in Santa Clara County Superior Court
8 Case No: 80888.

9 6. During the Course of Direct Appeal the plaintiff was represented by Mr.
10 John Kelley, Attorney at Law Mr. Kelly submitted a motion for the preserv-
11 ation of evidence, in the Superior Court of Santa Clara County, in case No:
12 80888.

13 7. The motion was granted by Santa Clara Superior Court judge, Jeremy Fogel
14 on October 1, 1986, wherein he ordered that

15 "No evidence be destroyed until all state and federal petitions
16 for writs of habeas corpus and other collateral proceedings,
17 whether or not such proceedings have been currently initiated, have
18 been completed or until such time as defendant has indicated in
writing to the court that no further petitions or other collateral
proceedings will be sought by him."

19 8. During the course of collateral review the plaintiff was represented by
20 the innocence project of Santa Clara County. The innocence project of Santa
21 Clara County in turn appointed Ms. Linda Starr Attorney At Law.

22 9. Linda Starr; initiated a complete discovery whereupon it was ascertained
23 that the "preservation of evidence" order of Oct 1, 1986, had been violated.

24 10. Ms. Linda Starr repeated attempted to obtain the potentially exonerat-
25 ing evidence in the plaintiff's behalf.

26 11. On Jan 4, 2008, the plaintiff was notified by Ms. Linda Starr, that the
27 evidence in case No: 80888 was destroyed.

28 12. On Jan 31, 2008, Santa Clara County Superior Court Judge Ray Cunningham

1 terminated the innocence project of Santa Clara County, as
2 plaintiff's counsel.

3 **CONSTITUTIONAL VIOLATIONS**

4 13. The conduct of defendants James Norris upon destroying the
5 potentially exonerating deoxyribonucleic acid (DNA) evidence
6 ignoring a Superior Court order to preserve all the evidence in
7 the plaintiff's case, contributed to and proximately caused a
8 denial of the plaintiff's due process rights in violation of
9 the Fourteenth Amendment to the United States of America.

10 14. And deprived plaintiff of the opportunity to make a conclu-
11 sive showing of actual innocences, in violation of the Cruel and
12 Unusual Punishment of the Eighth Amendment of the United States
13 of America.

14 15. Defendants deprived plaintiff of his right to present evid-
15 ence of his innocences in State and Federal Court.

16 16. The conduct of City of Santa Clara County municipality is
17 liable for Constitutional violations resulting from it's failu-
18 re to train municipal employees, not to destroy evidence over a
19 Superior Court order to preserve all the evidence in plaintiff-
20 's case contributed to and proximately caused a denial of the
21 plaintiff's due process rights in violation of the Fourteenth
22 Amendment of the United States of America.

23 17. Defendants deprived plaintiff of the opportunity to make a
24 conclusive showing of actual innocence, in violation of the Cruel
25 and Unusual Punishment of the Eighth Amendment of the United
26 States of America.

PRAYER FOR RELIEF

18. Compensatory damages as follows: jointly and severally against defendants Santa Clara County, and criminalist James Norris for humiliation and mental anguish and emotional distress from their denial of due process in destroying this evidence in violation with a Superior Court order to preserve all the evidence, in violation of the Fourteenth Amendment of the United States Constitution.

19. Punitive damages: against defendants James Norris criminalist for reckless and callous disregard for the plaintiff's rights as well as intentional violations of Federal Law.

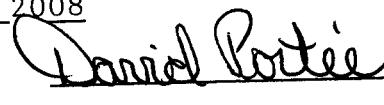
20. Punitive damages: against defendant Santa Clara County for reckless and callous disregard for the plaintiff's rights as well as intentional violations of Federal Law.

Intended to punish the defendants for their conduct and to deter them and others from committing similar acts in the future.

21. Plaintiff request this Court to appoint counsel in this case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signed This 21 day of July 2008



Plaintiff's signature

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, DAVID PORTEE, declare:

I am over 18 years of age and a party to this action. I am a resident of CTF-Soledad
Prison,

in the county of _____,

State of California. My prison address is: P.O.Box 689 F-331U
Soledad Ca.

On July 2008
(DATE)

I served the attached: 42 U.S.C.1983 Civil Compliant

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 21 2008
(DATE)

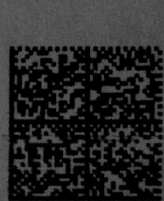
David Portee
(DECLARANT'S SIGNATURE)

David D. Borte's Case

P.O. Box 689 R-33111

Soledad, CA. 93960-0689

PRO



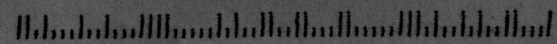
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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